

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WILLIAM WENTWORTH FOSTER,

Plaintiff,

v.

GEORGE LOMBARDI, et al,

Defendants.

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No. 4:16CV373 RLW

MEMORANDUM AND ORDER

Before the Court is plaintiff's amended complaint. After reviewing plaintiff's amended complaint pursuant to 28 U.S.C. § 1915, the Court will vacate its prior order granting plaintiff the ability to proceed as a pauper and will dismiss this action pursuant to 28 U.S.C. § 1915(g).

Background

Plaintiff is a prisoner currently incarcerated at Eastern Reception, Diagnostic and Correction Center ("ERDCC"). Plaintiff filed his initial complaint in this action on March 31, 2016. On May 10, 2016, the Court reviewed plaintiff's seventy-five (75) page initial complaint and found that it required amendment, pursuant to Federal Rules of Civil Procedure 8 and 10, as well as Local Rule 2.06(A). Plaintiff was also required to amend his complaint because he was attempting to bring this action as a class case, pro se, which he cannot do. Although the Court granted plaintiff in forma status in its May 2016 Memorandum and Order, based on plaintiff's initial allegations in this matter, after reviewing the amended allegations in plaintiff's amended complaint, as well as the Court record, the Court will dismiss this matter pursuant to 28 U.S.C. § 1915(g).

Discussion

Title 28 U.S.C. § 1915(g) provides that a prisoner may not bring a civil action in forma pauperis if “on 3 or more [earlier] occasions. . .[the prisoner has] brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”

The Court must vacate its prior order granting plaintiff in forma pauperis status. A review of this Court’s files and those of the United States District Court for the Western District of Missouri indicate that plaintiff has had three or more actions or appeals dismissed as frivolous. *See Foster v. Moore*, No. 2:91CV4539 (W.D.Mo.); *Foster v. Malone*, No. 2:90CV4058 (W.D.Mo.); and *Foster v. Rutledge*, No. 2:89CV4496 (W.D.Mo.). Furthermore, a review of the amended complaint indicates that plaintiff is not under “imminent danger of serious physical injury,” as noted below.

In his eighty-seven (87) page amended complaint, plaintiff again asserts that he wants to bring a class action against eleven defendants in the Missouri Correctional System. His individual and class claims include assertions of: (1) denial of access to courts by withholding legal documents and refusing to provide pens and paper; (2) disputes regarding the removal of funds from prison accounts to pay legal fees; (3) deliberate indifference to a medical issue which occurred in December of 2015; (4) hearing loss due to extreme noise from being housed in Administrative Segregation in July of 2015; (5) complaints about inmates in Administrative Segregation (when he was housed there in 2015) being given medication and showers at night because this caused sleep deprivation; (6) disputes that the Jewish diet doesn’t have enough calories versus the Halal diet; (7) complains that those housed in Administrative Segregation in

the wintertime are cold because they don't have warm clothing; (8) and complaints that there is no real difference in ERDCC between Administrative Segregation and Protective Custody.

After carefully reviewing the amended complaint, the Court finds no allegations that show plaintiff is in imminent danger of serious physical injury. As such, the Court will vacate its prior order granting plaintiff in forma pauperis status. As it does not appear that plaintiff has paid the initial partial filing fee of \$1.70 in this matter, no funds will need to be returned to plaintiff at this time.

Accordingly,

IT IS HEREBY ORDERED that the Court's May 10, 2016 Memorandum and Order will be **VACATED IN PART**. The part of the order granting plaintiff's motion to proceed in forma pauperis is **VACATED, as is the assessment of the initial partial filing fee of \$1.70**. Plaintiff is no longer obligated to pay an initial partial filing fee in this action.

IT IS FURTHER ORDERED that plaintiff's motion to proceed in forma pauperis is **DENIED as he has three prior cases dismissed as frivolous, malicious or for failure to state a claim. See 28 U.S.C. § 1915(g).**

A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 6th day of September, 2016.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE